

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

MALIBU CONDOMINIUM ASSOCIATION,)	
)	
Petitioner)	
)	Docket No. 08-0401
v.)	
)	
COMMONWEALTH EDISON COMPANY,)	
)	
Respondent.)	

**COMMONWEALTH EDISON COMPANY’S
VERIFIED ANSWER TO AMENDED FORMAL
COMPLAINT OF PETITIONER MALIBU CONDOMINIUM**

Commonwealth Edison Company (“ComEd”), by its attorneys, hereby submits its Answer to Malibu’s Amended Complaint (“Answer”) and states as follows:

I. PARTIES

1. Malibu is an Illinois-not-for profit corporation in the form of a condominium association which operates a 357-unit, 39 story residential multi family building (the "Building") which is located in ComEd's service territory at 6007 North Sheridan Road in Chicago, Illinois.

ANSWER: Admitted.

2 Malibu is a unit owner's association as defined by Section 2 of the Illinois Condominium Property Act, 765 ILCS 605 et seq. (the "CPA").

ANSWER: Admitted.

3. ComEd is an Illinois public utility that provides electric services for public use under the Illinois Public Utility Act (220 ILCS 5/1-101 et seq. (the "PUA" or the "Act"). Pursuant to the Act, the Illinois Commerce Commission ("ICC" or the "Commission") has jurisdiction over the subject matter of this Complaint.

ANSWER: Admitted.

II. FACTS

4. The Building is an "all-electric" multi-family condominium property constructed in 1969. The Building uses electric space heating in the individual units and within the public and common areas.

ANSWER: ComEd lacks information sufficient to form a belief as to when “The Building” was constructed. The remaining allegations contained in ¶ 4 are admitted.

5. At all times during its existence, the Building has been used solely for residential purposes. At no time has the Building been used for industrial, commercial or other non-residential uses.

ANSWER: ComEd admits that at all relevant times the Building has contained 357 residential units. ComEd further states that the Building also contains condominium common areas that receive service for space heating and further states that the common areas are a non –residential use. ComEd denies all remaining allegations contained in ¶ 5.

6. The Building was designed and built by its developer, Dunbar Builders, who, on information and belief, assisted in pioneering the concept and marketing of individual electric space heating, air-conditioning and cooking in every condominium unit, along with electric space heating in the public and common areas in conformance with ComEd's requirements and incentives.

ANSWER: ComEd lacks information sufficient to form a belief as to the truth of the allegations contained in ¶ 6.

7. The development of "all-electric" buildings, including multi-family residential buildings, benefited ComEd by introducing significant electric load and additional kilowatt-hours ("kWh") and kilowatts ("kW") of electric generating capacity for heating purposes during the winter and

non-summer months in order for ComEd to operate more efficiently its significant portfolio of coal and nuclear generating stations year-round.

ANSWER: The allegations in ¶ 7 are vague and ambiguous and are therefore denied.

8. Over 900 "all-electric" multi-family residential buildings were constructed to use electric space heat within ComEd's service territory and received electric service under ComEd's electric space heating rates, including ComEd's Rate 14 (Residential Electric Space Heating), as modified from time to time.

ANSWER: ComEd lacks information sufficient to form a belief as to the truth of the allegations contained in ¶ 8.

9. According to the express terms of ComEd's Rate 14:

This rate is available to any customer who uses the Company's electric service for residential purposes and whose entire space heating requirements are supplied under this rate through electric space heating facilities, the major portion of which is permanently installed.

ANSWER: ComEd states that the document identified as its Rate 14 tariff speaks for itself.

10. From 1969 until November 22, 1999 the common areas of the Building operated by Malibu received electric service under ComEd's residential tariff- Rate 14. Rate 14 provides bundled electric service for residential customers using electricity as the energy source for heating and cooling purposes. Since 1969, Malibu has conformed to and complied with ComEd's requirements as a residential electric space heating customer under Rate 14. A copy of ComEd's Rate 14 tariff, as approved by this Commission as the published rate for residential service using electric space heating, is attached as **Exhibit A** hereto and made a part hereof.

ANSWER: ComEd admits that from 1969 to November 22, 1999, the common areas of the Building operated by Malibu received electric service under ComEd's residential tariff-

Rate 14. ComEd admits that attached to Malibu's Amended Complaint as Exhibit A is a version of a ComEd Rate 14 tariff, and states that the document speaks for itself. ComEd lacks information sufficient to form a belief as to the truth of the allegations contained in ¶ 10.

11. On or about November 22, 1999, and without the authorization, consent or knowledge of Malibu, ComEd unilaterally, wrongfully and improperly switched Malibu's residential electric service classification from the proper rate, Rate 14, to an improper and more expensive, commercial rate, Rate 6.

ANSWER: ComEd admits that on or about November 22, 1999, it switched the service classification for Malibu's condominium common area service from Rate 14 to Rate 6. ComEd denies all remaining allegations contained in ¶ 11.

12. Rate 6 provides for basic electric service for non-residential customers. By the express terms of Rate 6, such rate is applicable only to commercial, industrial, or governmental customers with maximum demands of less than 1,000 kilowatts for all service requirements. Rate 6 was not available to residential customers such as Malibu. A true and correct copy of Rate 6, as approved by the Commission as the published rate for general service for non-residential customers, is attached as **Exhibit B** hereto and made a part hereof.

ANSWER: ComEd denies that Rate 6 was not available to Malibu. ComEd admits all remaining allegations in ¶ 12.

13. Malibu is not and has never been a commercial, industrial or governmental customer. According to the terms and conditions of Rate 6, Malibu is and was at all times ineligible to receive electric service under Rate 6.

ANSWER: Denied.

14. On or about November 22, 1999 through on or about November 22, 2000, after improperly switching Malibu's rate classification from Rate 14 to Rate 6, ComEd improperly and wrongfully measured the quantity and/or volume of electricity used by Malibu and improperly and erroneously failed to properly bill Malibu for electric service.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 14 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 14 is required.

15. Under the provisions of Rate 14, ComEd charged and collected revenues from Malibu based upon energy usage measured in kWh only. Rate 14 does not provide for the measurement of demands or set forth a demand charge for providing service. In contrast, Rate 6 provides for ComEd to measure, bill and collect revenues based on a customer's demand through a Demand Charge, in addition to collecting additional revenues from an Energy Charge.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 15 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 15 is required.

16. By unilaterally switching Malibu's rate classification, ComEd wrongfully measured, charged and billed Malibu incorrectly for public utility service under its published rates beginning on November 22, 1999 and continuing through today.

ANSWER: Denied.

17. Malibu paid ComEd pursuant to such incorrect billings issued by the public utility in a timely fashion.

ANSWER: ComEd admits that Malibu paid its invoices for its common area service in a timely fashion. ComEd denies all remaining allegations in ¶ 17.

18. ComEd's billings were also incorrect due to ComEd's errors in introducing a new measurement of service, a demand charge, that had heretofore not existed for Malibu under its proper service and rate classification. Through the introduction and measurement of demand charges, which demand charges were previously not measured, applied or billed under the proper and applicable service and rate classification, ComEd submitted excessive incorrect billings to Malibu, which Malibu duly paid.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 18 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 18 is required.

19. Furthermore, after improperly switching Malibu's rate classification, ComEd continued to submit incorrect billings that erred in measuring demand and usage pursuant to its own Rate 6 tariff as set forth below.

ANSWER: Denied.

20. After unilaterally switching Malibu's service classification from Rate 14 to Rate 6, ComEd exacerbated its unauthorized and improper rate classification switch by continuing to err in applying its own Rate 6 tariff language to measure, bill and collect revenues from Malibu.

ANSWER: ComEd admits that on or about November 22, 1999, it switched the service classification for Malibu's condominium common area service from Rate 14 to Rate 6. ComEd denies all remaining allegations contained in ¶ 20.

21. Rate 14 charges customers an energy charge per kWh for all kWhs supplied in the billing period which is generally a month. Rate 14 does not charge customers demand charges. Rate 6 and its various applications are designed for ComEd to collect its revenue requirement through the application of both demand and energy usage charges. By introducing the demand charge

component to Malibu's billings, ComEd erred in measuring service provided to Malibu.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 21 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 21 is required.

22. On or about November 22, 1999 through on or about November 22, 2000, in contravention of the express terms and conditions of ComEd's Rate 6 tariff, ComEd continued to use five watt-hour only ("WHR only") meters for measurement of service for Malibu's Building account, resulting in further ComEd errors in measuring the quantity and volume of electricity used and demanded by Malibu, and correspondingly wrongfully billing Malibu and improperly collecting revenues from Malibu for erroneous volumes and quantities of electric energy usage and demand.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 22 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 22 is required.

23. Utilization by ComEd of WHR only meters to measure kW and kWh resulted in further incorrect billings issued to and paid by Malibu. Such WHR only meters are only properly and lawfully used to measure service for residential and small commercial customers and were not applicable to measuring service based on Malibu's electric characteristics. ComEd's use of WHR only meters is in express contravention to the provisions of Rate 6.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 23 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 23 is required.

24. Consequently, even if ComEd's switching of Malibu's rate classification from Rate 14 to

Rate 6 had been proper, ComEd still erred in measuring the quantity and volume of electricity demanded and used by Malibu under the provisions of Rate 6 for the billing period beginning in November 1999 through approximately November 22, 2000.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 24 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 24 is required.

25. Subsequently, beginning on November 22, 2000 and continuing for approximately twelve months through November 13, 2001, and in continuing contravention of the express terms of its own Rate 6 tariff, ComEd wrongfully and improperly measured, billed and collected revenues from Malibu for "in Lieu of Demand" charges, which charges were not applicable to Malibu as a residential all-electric customer of ComEd.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 25 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 25 is required.

26. According to the terms and conditions of Rate 6, "in Lieu of Demand" charges are only permitted when a customer's electric usage is less than 2,000 kWh per month and/or less than 10 kW of demand per month.

ANSWER: The allegations in ¶ 26 are legal conclusions and therefore require no answer.

27. For each month from and after its construction in 1969, Malibu's monthly electric usage was not less than 113,152 kWh and did not exceed 539,958 kWh. During the same time period, Malibu's average demand would have always exceeded the 10 kW threshold (244 kW to 866 kW) in orders of magnitude. Consequently, (a) ComEd incorrectly assessed and measured the volume and quantity of service and should not have billed Malibu for "in Lieu of Demand"

charges, or any demand charges, and (b) ComEd incorrectly measured the quantity of electric service and wrongfully and erroneously billed Malibu for service at a cost of substantially more per kWh than for, upon information and belief, any other similarly situated customer with a similar load factor taking service under either Rate 14 or Rate 6.

ANSWER: ComEd lacks information sufficient to form a belief as to the truth of the allegations in the first two sentences of ¶ 27. All remaining allegations contained in ¶ 27 are denied.

28. On or about November 13, 2001, ComEd exchanged the five WHR only meters at Malibu's premises with five cumulative demand meters to measure electric service under Rate 6. Subsequently, ComEd continued to improperly bill and collect revenues from Malibu for electric service. After installing the cumulative demand meters at the Building, ComEd improperly and incorrectly categorized, measured and billed Malibu's electric service on Rate 6 by improperly using kW of demand for measurement of volume of service, (as opposed to Rate 6 "without kW of Demands" nor on Rate 6 with kW "in Lieu of Demands").

ANSWER: Petitioner's claims based on the allegations contained in ¶ 28 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 28 is required.

29. ComEd's measuring, billing and collecting revenue from Malibu pursuant to Rate 6 with kW of demand charges was wrongful and in express contravention of the terms of Rate 6 and the PUA.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 29 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 29 is required.

30. According to the express terms of Rate 6, Rate 6 service comprises of and is expressly deemed to be a "contract" with the customer during all times the customer takes service under such rate.

ANSWER: The allegations in ¶ 30 are legal conclusions and therefore require no answer.

31. On or about November 22, 2002, without Malibu's authorization, knowledge or consent, ComEd again wrongfully and unilaterally switched Malibu's electric service classification from Rate 6 to Rate 6T (General Service Time Of Day). Rate 6T is only applicable to nonresidential customers with maximum demands of 500 kW or more, but less than 1,000 kW, in three of the months preceding the billing month, or successors to customers served under such charges. The terms and provisions of such Rate 6T tariff are included within ComEd's filed tariffs governing Rate 6, which was approved by the Commission and attached as **Exhibit B** hereto and made a part hereof.

ANSWER: Petitioner's claims based on the allegations contained in ¶ 31 were dismissed in the Commission's Interim Order of June 24, 2009. Accordingly, no answer to ¶ 31 is required.

32. The express terms of Rate 6, which include the terms for Rate 6T, specify that only commercial, industrial or governmental customers are eligible for Rate 6T service. As such, ComEd contravened the terms of its own tariffs and the PUA by switching Malibu to Rate 6T and then by providing service to Malibu thereunder.

ANSWER: The allegations in the first sentence of ¶ 32 are legal conclusions and therefore require no answer. The remaining allegations in ¶ 32 are denied.

33. Through its application of Rate 6T and its measurement of energy usage and demand at Malibu's premises, and its billing for and collecting revenues from Malibu for such service,

ComEd acted in contravention of its tariffs and the PUA by improperly switching and slamming Malibu from its proper residential rate, Rate 14, and by providing service to Malibu under the inapplicable and improper rates, Rate 6 and subsequently Rate 6T.

ANSWER: Denied.

34. With ComEd's improper switching of Malibu's rates, and incorrectly measuring its demand and usage in accordance with inapplicable and wrongful rates, ComEd improperly and illegally damaged Malibu by increasing the costs for electric service in excess of its rate classification and collecting more than the revenue requirement allowed for electric service. Accordingly, the Building paid for service from ComEd that was improperly classified, measured and billed, to the detriment of Malibu and its residents.

ANSWER: Denied.

35. For all relevant periods of time, Malibu duly paid ComEd for all the electric service billed by ComEd to Malibu, despite ComEd's improper measurement and billing of inapplicable charges in accordance with rates corresponding to inappropriate service classifications.

ANSWER: ComEd admits that Malibu has paid its invoices for its common area service accounts. All remaining allegations in ¶ 35 are denied.

36. In contravention of its own rates, tariffs and the PUA, ComEd improperly switched Malibu's rate classifications without consent and detrimentally measured Malibu's quantity and volume of electric service in a variety of ways resulting in significant overcharges. Since 1999, Malibu has fully complied with all its obligations as a customer residing in ComEd's service territory under all applicable contracts, laws, regulations and tariffs and remains eligible to receive service as a residential space heating customer with respect to its residential units and common areas.

ANSWER: ComEd denies the allegations in the first sentence of ¶ 36. ComEd lacks information sufficient to form a belief as to whether Malibu has complied with all of its obligations as a customer residing in ComEd's service territory. ComEd admits that the occupants of the residential units in Malibu were eligible to receive service as residential space heating customers. All remaining allegations in ¶ 36 are denied.

37. Pursuant to the express terms and conditions of ComEd's rates on file from time to time for public viewing at the Illinois Commerce Commission, customers can make written application for a rate change subject to the customer's existing contract provisions.

ANSWER: The allegations in ¶ 37 are legal conclusions and therefore require no answer.

38. At all times relevant herein, Malibu never expressly, impliedly or otherwise selected or applied to switch service from Rate 14 to Rate 6 or to Rate 6T service.

ANSWER: Denied.

39. Standards and procedures governing the switching by ComEd of customers' tariffed rates are set forth in ComEd's SUPPLEMENTAL STATEMENT ELECTRICITY ILL C. C. NO. 4, filed with the Commission on April 16, 1996 (the "Supplemental Statement"). Such Supplemental Statement expressly states that: "If changes occur in the customer's total load or load pattern that make the customer eligible for another rate or rate combination, then the customer should make written application to the Company to be transferred to such rate or rate combination." Nowhere does such Supplemental Statement or in any other documents filed by ComEd with the Commission permit ComEd to switch a residential customer from Rate 14 to another rate without the application or consent of the customer. A true and correct copy of such Supplemental Statement is attached as **Exhibit C** hereto and made a part hereof.

ANSWER: ComEd admits that attached to Malibu's Amended Complaint as Exhibit C

is a document titled “Supplemental Statement” and states that the document speaks for itself. The remaining allegations in ¶ 39 are legal conclusions and therefore require no answer.

40. For the period from 1969 to date, there were no material changes in Malibu's electric use load profile or pattern, and Malibu never made any application or request to be transferred from Rate 14 to any other rate or rate combination.

ANSWER: ComEd lacks information sufficient to form a belief as whether there were material changes to Malibu’s load profile or pattern dating back to 1969. All remaining allegations in ¶ 40 are denied.

41. ComEd's policies and practices regarding changing of customers' rates are further set forth in ComEd's internal memorandum dated April 6, 1992 to its Division Engineers (the "Memorandum"), which Memorandum provides that reclassification of a rate should be requested by the customer and that such reclassification should be consistent with the loads that the customer has experienced during the last 16 consecutive billing months. Such Memorandum further states, inter alia, that before ComEd can change a customer's rate, ComEd's Sales Department should present all of the customer's load, engineering and facilities charges and cost information to the customer in the form of an electric service contract (including Rider 6 and 7 contract forms) and an explanatory letter. A copy of the Memorandum is attached as **Exhibit D** hereto and made a part hereof.

ANSWER: ComEd admits that attached to Malibu’s Amended Complaint is a copy of a ComEd internal memorandum dated April 6, 1992 to its Division Engineers, and states that the document speaks for itself.

42. Such Memorandum also expressly requires at Par. 7 thereof that: "Once the customer has

signed the new electric service agreement setting forth his rate classification, the customer will be provided service accordingly starting on the next regular billing date."

ANSWER: ComEd admits that attached to Malibu's Amended Complaint is a copy of a ComEd internal memorandum dated April 6, 1992 to its Division Engineers, and states that the document speaks for itself.

43. Despite its own requirements as articulated in the Memorandum, ComEd never presented an explanatory letter or new electric service contract contemplated by the Memorandum to Malibu prior to switching Malibu's rate classification to Rate 6 and subsequently to Rate 6T, and never provided Malibu with the load, cost and other information required to be provided to a customer before switching the customer's rate classification.

ANSWER: ComEd lacks information sufficient to form a belief as to whether it sent Malibu an explanatory letter or a written electric service contract when switching Malibu from Rate 14 to Rate 6. All remaining allegations in ¶ 43 are denied.

44. Pursuant to Section 16-103.1 of the PUA, (a) ComEd must provide tariffed service to unit owners' associations (as defined by Section 2 of the CPA) that are not restricted to nonresidential use at rates that do not exceed on average the rates offered to residential customers on an annual basis, and within ten days of the effective date of the amendatory PUA, ComEd must provide such tariffed service to such unit owners associations and must reinstate any residential all-electric discount applicable to any unit owners' association that received such a discount on December 31, 2006.

ANSWER: The allegations in ¶ 44 are legal conclusions and therefore require no answer.

45. Malibu is a unit owners association for a condominium property that is not restricted to nonresidential use and is a residential customer within the meaning of Section 16-103.1 of the

PUA. Malibu is entitled to the all-electric discount applicable to unit owners' associations; however, in contravention of Section 16-103.1, ComEd failed to comply with the PUA and never provided the tariffed service required by such Section and failed to reinstate for Malibu the residential all-electric discount required thereunder upon repeated requests.

ANSWER: ComEd admits that Malibu is a multi-unit owners association for condominium property. The remaining allegations in ¶ 45 are denied.

46. As a direct result of ComEd's improper and unauthorized switching of Malibu's service from the correct rate, Rate 14, to the incorrect rates, Rate 6 and Rate 6T, for the period from November 22, 1999 to January 2, 2007, Malibu was overcharged for its electric service by an amount of not less than \$403,000 over the amount which it should have been charged under Rate 14, in addition to the other overcharges and interest amounts herein set forth.

ANSWER: Denied.

47. Neither Malibu nor any current or prior officer of Malibu, board member or other agent or representative of Malibu ever requested, applied for or consented to ComEd's switching of electric service rates, to Rate 6 or Rate 6T or otherwise, and such switching was effected by ComEd without Malibu's knowledge or consent.

ANSWER: Denied.

48. Malibu first acquired actual knowledge and discovered that the improper switching had taken place and that ComEd had since November 1999 made the overcharges, mis-measurements and billing errors described in the Complaints in August 2007 when the president of Malibu, Lynn Cohen, was first informed by Malibu's property manager, Brian Kelly of Chicagoland Management & Realty, Inc. that a utility consultant engaged by Malibu in June, 2007 had reviewed Malibu's electricity bills and determined that ComEd had improperly switched Malibu

to improper rate classes, mis-measured the quantity and volume of electricity provided to Malibu and had made numerous billing errors resulting in overcharging Malibu for electric service since November, 1999.

ANSWER: Denied.

49. Copies of Malibu's bills from ComEd for the period from September 25, 1985 to February 27, 2007 are attached as **Exhibit E** hereto and made a part hereof.

ANSWER: ComEd admits that attached to Malibu's Amended Complaint as Exhibit E are documents that purport to be Malibu's bills from ComEd from September 25, 1985 through February 27, 2007, and states that the documents speak for themselves. ComEd further states that included in Exhibit E are documents that did not originate from ComEd. All remaining allegations in ¶ 49 are denied.

50. At no time prior to June 2007 did Malibu nor any current or prior officer of Malibu, board member or other agent or representative of Malibu discover, acquire or have any actual knowledge that ComEd had improperly switched Malibu's service classification, made errors in measuring electric service or overcharged and collected for such improper service from Malibu since November, 1999.

ANSWER: Denied.

51. Upon discovering the errors and communicating such errors to ComEd, ComEd has refused and failed to refund any of the overpayments made by Malibu since November 22, 1999.

ANSWER: ComEd admits that it has not issued refunds to Malibu. All remaining allegations in ¶ 51 are denied.

52. Pursuant to ComEd's "RIDER CABA" - "COMMON AREA BILLING ADJUSTMENT" ("Rider CABA"), as approved by the Commission, all residential electrically heated

public/common area customers are entitled to a credit for ComEd's overcharges beginning on January 2nd, 2007 until present. Malibu is an electrically heated public/common area customer within the meaning of such Rider CABA. A copy of Rider CABA is attached as **Exhibit F** hereto and made a part hereof.

ANSWER: ComEd admits that a copy of Rider CABA is attached to Malibu's Amended Complaint as Exhibit F. All remaining allegations in ¶ 52 are denied.

53. The credit due under Rider CABA is shown on ComEd billings as a line item: "Common Area - Special Credit". According to Rider CABA and based upon this credit being provided to similarly situated customers in ComEd's service territory, ComEd failed to measure for and provide a credit to Malibu pursuant to such Rider CABA. Accordingly, Malibu is entitled to an additional credit/refund of \$0.035/kWh which amounts to a sum in excess of \$89,001.41 for the 12 months of 2007 and through the period through June 30, 2008.

ANSWER: ComEd admits that it did not provide Malibu with a credit under Rider CABA and further states that Malibu was not eligible to receive any such credit. All remaining allegations in ¶ 53 are denied.

54. The express terms of Rate 6, as well as the Terms and Conditions thereto filed with the Commission on April 16, 1998, a selection of rate is the responsibility of the customer, which selection is effected by the customer's written request. Additionally, ComEd's own publication effective January 14, 1995 summarizing its nonresidential rates, entitled "Non-Residential Rates" mandates that customers must elect in writing to be billed under Rate 6. A copy of such Non-Residential Rates publication is attached as **Exhibit G** hereto and made a part hereof. ComEd's reference to such requirement is stated as follows:

a. " ... upon written application by the customer to the Company." (see

Rate 6 attached as **Exhibit B)**

b. " ... such customer may elect, in written application to the Company, to be served on General Service - Non-Time of Day."

(see Rate 6 attached as **Exhibit B)**

c. "Any customer may elect Time of Day service by written application to the Company" (see Rate 6 attached as **Exhibit B)**

d. "Customers,...served hereunder may, upon written request, elect to have the rates for such service...." (see Rate 6 attached as **Exhibit B)**

e. "The customer shall have the right to terminate his contract and discontinue service from the Company at anytime on 30 days' written notice to the Company" (see Rate 6 attached as **Exhibit B)**

f. "However, you may elect in writing to be billed under the provisions of Rate 6 - Non-Time of Day or Rate 6 - Time of Day." (see Rate 6 attached as **Exhibit B)**

g. "However, if you feel that time of day billing would be advantageous, you may elect in writing to be billed under the provisions of Rate 6 Time of Day." (see Rate 6 attached as **Exhibit B)**

h. ".....you may request in writing that your account be transferred to Rate 6 - Non-Time of Day." (see Rate 6 attached as **Exhibit B)**

i. "....you may request in writing that your account be transferred to the appropriate Rate 6 category listed above." (see Rate 6 attached as **Exhibit B)**

j. "However, you may request in writing that your account be transferred to the appropriate rate listed above." (see Rate 6 attached as **Exhibit B)**

ANSWER: Admitted.

55. Despite such express requirements that the customer select its rate and that the customer must apply in writing for a rate change, Malibu never elected to be switched from its proper rate, Rate 14 and never requested or applied to change its rate to Rate 6 or Rate 6T.

ANSWER: Denied.

56. Upon first discovering that ComEd had improperly switched its service to improper rates and had been overcharging for its service since November 22, 1999, Malibu made repeated written requests and demands that ComEd refund the overcharges owed to Malibu; however, ComEd has wrongfully failed and refused to refund any such amounts to Malibu.

ANSWER: ComEd admits that Malibu has made repeated written requests and demands for refunds. ComEd admits that it has not issued refunds to Malibu. All remaining allegations in ¶ 56 are denied.

57. On or about November 27, 2007, in response to Malibu's continuing requests for a refund of the overcharges, ComEd's representative Robert L. Jacobs sent a letter to Malibu on behalf of ComEd rejecting Malibu's claim for a refund of overpayments, which letter states, *inter alia*, that:

"I have examined our records and have determined that the association is clearly on a rate they qualify for...ComEd cannot be sure why they are on that rate or migrated to that rate...[and] It clearly states in ComEd's Terms and Conditions that rate selection is done by the customer..."

A copy of such November 27, 2007 letter is attached as **Exhibit H** hereto and made a part hereof. To date ComEd has not produced any document or evidence in support of its assertion that Malibu requested or authorized any change of its electric service from Rate 14.

ANSWER: ComEd admits that a copy a letter dated November 27, 2007 is attached hereto as Exhibit H, and states that the letter speaks for itself. All remaining allegations in ¶ 57 are denied.

58. On January 31, 2008, in response to further demands by Malibu, ComEd, by its representative John Parise, sent an email to Malibu's energy consultant which stated:

As a follow-up to our conversation, attached is a document showing all customer contacts on the Malibu ComEd account. As you can see by the attached document, a representative from Malibu Condo 's contacted ComEd on September 10, 1999 to request a letter regarding their not being selected for the Lottery. It is important to note that ComEd would not move a customer from a residential rate to a commercial rate without the customer requesting the change.

A copy of such January 31, 2008 email and attachments thereto is attached as Exhibit I hereto and made a part hereof.

ANSWER: Admitted.

59. Neither such email nor any of the attachments thereto, nor any other document provided by ComEd in any way evidence or support ComEd's allegation that Malibu requested any change of its electric service from Rate 14, and Malibu never requested or authorized any such change. To date, no documents or other information evidencing Malibu requesting a change in electric service classification has been provided despite repeated requests; furthermore, no change of electric service classification has ever been requested by Malibu.

ANSWER: Denied.

60. On February 6, 2008 Malibu's energy consultant, on behalf of Malibu, sent an email to John Parise again requesting such information. A copy of such February 6, 2008 email from Malibu's consultant and attachments thereto is attached as Exhibit J hereto and made a part hereof.

ANSWER: Admitted.

61. In response to such February 6, 2008 email, John Parise on behalf of ComEd, responded with an email dated February 6, 2008 which stated that:

"Marshall: If you have further questions, please number and place on a separate document..

.Thanks!"

A copy of such February 6, 2008 email from John Parise is attached as **Exhibit H** hereto and made a part hereof.

ANSWER: **Admitted.**

62. Inasmuch as Malibu had already submitted detailed and numbered requests for information to ComEd, such February 6, 2008 email from John Parise was sent in bad faith and for the wrongful purpose of stonewalling and hindering Malibu's enforcement of its lawful rights as a public utility customer.

ANSWER: **Denied.**

63. Although Malibu had already provided information and detailed requests for information, and ComEd had already received repeated and detailed requests for information concerning Malibu's account and the overcharges thereon, later, on February 6, 2008, Malibu's consultant on behalf of Malibu sent another email to ComEd setting forth detailed requests for information, which email stated:

"In response to your 2nd refusal today to answer our questions, (02/06/08 9:10 A.M. & 02/06/08 1:27 P.M.), this is the third e-mail to you today, (02/06/08 9:01 A.M. & 02/06/08 9:59 A.M. & 02/06/08 3:19 P.M.), with the attached 2-pages of eight different requests for explanations and/or documents. Your last e-mail response said: " please number and place on a separate document...Thanks!"

I don't know how else we can ask you for this information since we are already complying. Malibu's 2-page request for explanations and documents was/is "numbered" with questions from #1 to #8 and it was/is "attached" to each of my e-mails and "placed on a separate document." Please have ComEd comply with our request and answer/respond/comply to each of our eight separate and different requests. Thank you."

A copy of such February 6, 2008 email and attachments thereto is attached as **Exhibit L** hereto and made a part hereof.

ANSWER: **Admitted.**

64. In response, ComEd, by its representative John Parise, again refused to provide any information or to answer any of Malibu's questions, and sent an email to Malibu which stated that:

"You have my final reply...If you want to pursue this further I suggest you go through the ICC...Thanks!"

A copy of such February 6, 2008 email is attached as **Exhibit** M hereto and made a part hereof.

ANSWER: ComEd admits that on February 6, 2008, ComEd representative John Parise sent the e-mail attached to Malibu's Amended Complaint as Exhibit M and that Exhibit M was the entirety of John Parise's response to Malibu's e-mail of February 6, 2008. All remaining allegations in ¶ 64 are denied.

65. ComEd's refusal to provide information concerning Malibu's accounts or to redress the overcharges was wrongful, intentional and done for the sole purpose of stonewalling and hindering Malibu's lawful exercise of its rights as a public utility customer.

ANSWER: Denied.

66. Malibu filed an informal complaint with the Commission on or about October 25, 2007 (within 24 months of its discovery of such overcharging) to seek redress for the improper overcharging and wrongful acts by ComEd; however Malibu was unable to obtain any relief pursuant to such informal complaint.

ANSWER: ComEd admits that Malibu filed an informal complaint on or about October 25, 2007 seeking refunds for alleged overcharges. ComEd admits that it did not provide Malibu with relief in response to its informal complaint. All remaining allegations in ¶ 66 are denied.

III. CAUSES OF ACTION

COUNTI. COMED OVERCHARGED MALIBU FOR ELECTRIC SERVICE

67. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 67, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

68. During the period from November 22, 1999 to January 2, 2007, ComEd wrongfully and improperly collected revenues from Malibu through, inter alia, failing to comply with the PUA and its rates and tariffs by unilaterally and improperly switching Malibu's class of service, erring in measurement of Malibu's quantity and volume of electric service, unreasonably overcharging Malibu for electric service and wrongfully and improperly retaining payments for the amounts of overcharges.

ANSWER: Denied.

69. Despite such wrongful conduct by ComEd, Malibu has paid ComEd for all sums billed by ComEd to Malibu and has otherwise complied with all its obligations and duties as a customer of the public utility.

ANSWER: ComEd admits that Malibu has paid its invoices for its common area account from November 22, 1999 through January 2, 2007. ComEd lacks information sufficient to form a belief as to whether Malibu has complied with all its obligations and duties as a customer of the public utility.

70. As a direct and proximate result of ComEd's various and substantive errors, Malibu overpaid ComEd in an amount in excess of \$403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount; accordingly, Malibu seeks reparation therefor and seeks repayment from

ComEd for such overpayments plus interest.

ANSWER: ComEd admits the Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 70 are denied.

COUNT II. COMED VIOLATED SECTION 9-101 OF THE ACT

71. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 71, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

72. Pursuant to Section 9-101 of the Act, all rates or other charges made, demanded or received by a public utility for any product, commodity or service must be just and reasonable, and every unjust or unreasonable charge made, demanded or received therefore is prohibited and declared unlawful.

ANSWER: The allegations in ¶ 72 are legal conclusions and therefore require no answer.

73. The rates and charges made, demanded and received by ComEd for the period from November 22, 1999 to January 2, 2007 were excessive, unjust, unreasonable and in excess of the amounts which ComEd can lawfully charge Malibu.

ANSWER: Denied.

74. Malibu duly paid ComEd sums of money for electric service for the period from November 1999 through January 2007. Such sums paid by Malibu were excessive, unjust and unreasonable as calculated and billed by ComEd and in contravention of Section 9-101 of the Act.

ANSWER: ComEd admits that Malibu paid its invoices for its common area service account from November 1999 through January 2007. All remaining allegations in ¶ 74 are

denied.

75. As a direct and proximate result of such violations of the Act by ComEd, Malibu paid amounts to ComEd in excess of \$403,000, which sum represents the amount of money Malibu paid in excess of its proper rate classification and measurement of service from ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount. Malibu seeks reparation therefore and payment from ComEd for the amount above-stated from ComEd's violation of Section 9-101 of the Act.

ANSWER: ComEd admits that Malibu seeks reparation for its alleged damages. All remaining allegations in ¶ 75 are denied.

COUNT III. COMED VIOLATED SECTION 9-241 OF THE ACT

76. Malibu hereby incorporates and restates Paragraph 1 -66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 76, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

77. Pursuant to Section 9-241 of the Act, no public utility shall as to rates or other charges or in other respect make or grant any preference or advantage to any corporation or person nor subject any corporation or person to any prejudice or disadvantage, and no public utility shall establish or maintain any unreasonable difference as to rates or other charges or in any other respect as between classes of service.

ANSWER: The allegations contained in ¶ 77 are legal conclusions and therefore require no answer.

78. ComEd breached and violated the express provisions of Section 9-241 by improperly and discriminatorily charging Malibu for service at rates substantially and unreasonably higher than

comparable residential customers, by discriminating against Malibu in charging and collecting excessive sums of money for Malibu's electric service, by erring in measuring the quantity and volume of service provided to Malibu, by failing to refund overcharges to Malibu, by failing to provide credits and rebates to Malibu which are required by law to be provided to other comparably situated customers, and by improperly metering Malibu's service, all to Malibu's detriment.

ANSWER: Denied.

80. As a public utility, ComEd submitted Malibu to prejudice and disadvantage, by establishing and maintaining unreasonable differences in rates and other charges and by discriminating against Malibu as a residential customer that was and still is entitled to take service pursuant to its proper residential class of service.

ANSWER: Denied.

78. Through such discrimination, ComEd over-collected its appropriate revenue requirement from Malibu.

ANSWER: Denied.

81. As a direct and proximate result of ComEd's violations of Section 9-241 of the Act, Malibu has paid ComEd in an amount in excess of \$ 403,000, which sum represents the difference between the rate classification discrepancy (Rate 14 vs. various Rate 6 applications) from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount. Malibu seeks repayment of such sum from ComEd as a result of ComEd's discriminatory treatment.

ANSWER: ComEd admits that Malibu seeks repayment of such sum from ComEd. All remaining allegations in ¶ 81 are denied.

COUNT IV. COMED VIOLATED SECTION 9-240 OF THE ACT

82. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 82, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

83. Pursuant to Section 9-240 of the Act, no public utility shall charge, demand or receive a greater or less or different compensation for any product or commodity furnished than the rates or charges applicable to such services as specified in its schedules on file, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or privilege except as are regularly and uniformly extended to all corporations or persons.

ANSWER: The allegations contained in ¶ 83 are legal conclusions and therefore require no answer.

84. ComEd breached and violated the express provisions of said Section 9-240: (a) by charging and collecting from Malibu compensation for electric service substantially in excess of the rates specified in ComEd's filed schedules; (b) by improperly charging Malibu for demand charges; (c) by improper metering, resulting in Malibu paying different than the rates or charges specified in ComEd's schedules on file (d) by causing Malibu to take service under inapplicable rates, i.e. Rate 6 and Rate 6T, for which Malibu is expressly ineligible and which are not regularly and uniformly extended to all comparable residential customers; and (e) by extending Malibu a contract to take service under Rate 6/Rate 6T, which contract is not regularly and uniformly extended to all corporations and persons served under Rate 14.

ANSWER: Denied.

85. As a direct and proximate result of such violations and breaches and misconduct by

ComEd, Malibu has sustained direct damages in an amount in excess of \$ 403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its damages. All remaining allegations in ¶ 85 are denied.

COUNT V. COMED VIOLATED SECTION 9-252.1 OF THE ACT

86. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 86, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

87. Pursuant to Section 9-252.1 of the Act, when, as in the present case, a customer pays a bill submitted by a public utility and such bill is later found to be incorrect due to an error in charging more than the published rate or in measuring the quantity or volume of service provided, the utility must refund the overcharges with interest from the date of service provided, which refund and interest may be paid without the need for a hearing and order of the Commission.

ANSWER: The allegations contained in ¶ 87 are legal conclusions and therefore require no answer.

88. ComEd is a public utility which submitted incorrect bills to Malibu for the period from November 22, 1999 to January 2, 2007, which bills are incorrect due to errors in charging more than the published rates and in measuring the quantity or volume of service provided.

ANSWER: ComEd admits that it is a public utility. All remaining allegations in ¶ 88 are

denied.

89. Malibu has paid the incorrect bills submitted by ComEd for the period from November 22, 1999 to January 2, 2007, which bills are incorrect due to errors in charging more than the published rates and in measuring the quantity or volume of service provided; however, despite repeated demands, ComEd has failed to refund such overcharges or pay interest thereon as required by said section 9-252.1.

ANSWER: ComEd admits that Malibu has paid its bills from November 22, 1999 to January 2, 2007. ComEd admits that it has not issued any refund to Malibu for such payments. All remaining allegations in ¶ 89 are denied.

90. By failing to refund such overcharges or pay interest thereon, ComEd breached and violated the express provisions of said Section 9-252.1.

ANSWER: Denied.

91. As a direct and proximate result of such violations and breaches and misconduct by ComEd, Malibu has sustained direct damages in an amount in excess of \$ 403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: Denied.

COUNT VI. COMED VIOLATED SECTION 16-103.1 OF THE ACT

92. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 92, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

93. Pursuant to Section 16-103.1 of the PUA, (a) ComEd must provide tariffed service to unit owners' associations (as defined by Section 2 of the CPA) that are not restricted to nonresidential use at rates that do not exceed on average the rates offered to residential customers on an annual basis, and within ten days of the effective date of the amendatory PUA, ComEd must provide such tariffed service to such unit owners associations and must reinstate any residential all-electric discount applicable to any unit owners association that received such a discount on December 31, 2006.

ANSWER: The allegations in ¶ 93 are legal conclusions and therefore require no answer.

94. Malibu is a unit owners association for a condominium property that is not restricted to nonresidential use and is a residential customer within the meaning of Section 16-103.1 of the PUA.. Malibu is entitled to the all-electric discount applicable to unit owners' associations; however, in contravention of Section 16-103.1, ComEd failed to provide the tariffed service required by such Section and failed to reinstate for Malibu the residential all-electric discount required thereunder.

ANSWER: ComEd admits that it did not provide Malibu with a discount on its common area service rate under § 103.1 and further states that Malibu was not eligible to receive such a discount. ComEd admits that Malibu is a unit owners association for a condominium property. All remaining allegations in ¶ 94 are denied.

95. As a direct and proximate result of such violations and breaches and - misconduct by ComEd, Plaintiff has sustained direct damages in an amount in excess of \$ \$403,000 together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: Denied.

**COUNT VII. COMED VIOLATED THE EXPRESS TERMS OF ITS OWN
TARIFF, RATE 14**

96. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 96, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

97. Rate 14 is a filed tariff which has been approved by the Commission. As a matter of law, Rate 14 has the force of law which ComEd is legally obligated to observe.

ANSWER: The allegations in ¶ 97 are legal conclusions and therefore require no answer.

98. ComEd violated the express provisions of Rate 14 by (a) switching Malibu to another, higher rate class without the authorization, knowledge or consent by Malibu and without Malibu's written request therefore; and (b) by charging Malibu for its electric service for the period from November 22, 1999 to January 2, 2007 at rates vastly in excess of the amounts which ComEd is lawfully permitted to charge under Rate 14.

ANSWER: Denied.

99. As a direct and proximate result of such violations and breaches and misconduct by ComEd, Malibu has sustained direct damages in an amount in excess of \$403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 99 are denied.

**COUNT VIII. COMED VIOLATED THE EXPRESS TERMS OF ITS OWN
TARIFF, RATE 6**

100. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as

though fully set forth herein.

ANSWER: For its answer to ¶ 100, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

101. Rate 6 is a filed tariff which has been approved by the Commission. As a matter of law, Rate 6 has the force of law which ComEd is legally obligated to observe.

ANSWER: The allegations in ¶ 101 are legal conclusions and therefore require no answer.

102. ComEd violated the express provisions of Rate 6 by (a) switching Malibu to such Rate 6 from another, lower rate class without the authorization, knowledge or consent by Malibu and without Malibu's written request therefore; and (b) by applying to Rate 6, which is expressly limited to nonresidential customers, to Malibu, which is and at all times relevant hereto has been a residential customer, (c) by charging Malibu for its electric service for the period from November 22, 1999 to January 2, 2007 at rates in excess of the amounts which ComEd is lawfully permitted to charge under Rate 14 or Rate 6, (c) by improperly utilizing WHR only meters at the Building in express contravention of Rate 6, (d) by incorrectly measuring the quantity and volume of electricity provided under Rate 6 and Rate 6T, (e) by incorrectly billing Malibu for kW's "in Lieu of Demand" and subsequently incorrectly billing Malibu for kW's with kW of demand charges.

ANSWER: Denied.

103. As a direct and proximate result of such violations, breaches and misconduct by ComEd, Malibu has sustained direct damages in an amount in excess of \$403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007 together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 103 are denied.

**COUNT IX. COMED VIOLATED THE EXPRESS TERMS OF ITS OWN
TARIFF, RIDER CABA**

104. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 104, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

105. Rider CABA is a filed tariff which has been approved by the Commission. As a matter of law, Rider CABA has the force of law which ComEd is legally obligated to observe.

ANSWER: The allegations in ¶ 105 are legal conclusions and therefore require no answer.

106. ComEd violated the express provisions of Rider CABA by ComEd failing to measure for and provide the special credit to Malibu pursuant to such Rider CABA.

ANSWER: Denied. ComEd further states that Malibu was not eligible for a credit under Rider CABA.

107. As a direct and proximate result of such violations and breaches and misconduct by ComEd, Malibu has sustained direct damages in an amount in excess of \$ 89,001.00, which sum represents the credit due Malibu under Rider CABA for the 12 months of 2007 and through the period through June 30, 2008., and Malibu seeks payment from ComEd of such amount

ANSWER: ComEd admits that Malibu seeks payment for the amount alleged in ¶ 107. ComEd denies all remaining allegations contained in ¶ 107.

**COUNT X. COMED BREACHED ITS IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING**

108. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as

though fully set forth herein.

ANSWER: For its answer to ¶ 108, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

109. At all times relevant hereto, ComEd was and is a public utility within the meaning of the PUA.

ANSWER: Admitted.

110. As a matter of law, (a) every public utility has the obligation to act reasonably and in good faith in connection with the exercise of power vested by a tariff, and (b) the failure to exercise such power reasonably and in good faith is actionable.

ANSWER: The allegations in ¶ 110 are legal conclusions and therefore require no answer.

111. By virtue of its taking and paying for service under ComEd's filed tariffs, Malibu entered into a customer relationship with ComEd

ANSWER: Admitted.

112. Malibu has paid all sums billed by ComEd and has performed all of its obligations and duties required as a customer of ComEd under all applicable contracts, law, regulations, tariffs and statutes.

ANSWER: ComEd admits that Malibu has paid its invoices for its common area service. ComEd lacks information sufficient to form a belief as to whether Malibu has performed all of its obligations required as a customer of ComEd. All remaining allegations in ¶ 112 are denied.

113. ComEd breached its duties to Malibu (a) by improperly switching Malibu from Rate 14 to higher, improper nonresidential rates, (b) by overcharging Malibu for the electricity provided to

Malibu; (c) by failing to secure any authorization by Malibu prior to switching its electric service; (d) by mis-measuring the quantity and volume of electricity provided to Malibu; (e) by failing to refund overcharges to Malibu as required by law; and (e) by failing to respond to Malibu's repeated requests for information concerning the overcharges and by stonewalling and impeding Malibu's efforts to redress the overcharges, (f) by failing to provide a new electric service contract or explanatory letter to Malibu prior to switching Malibu to Rate 6, all in contravention of ComEd's own written policies and procedures; (g) by failing to give refunds, discounts and credits due and owing to Malibu under Rider CABA and Section 16-103.1 of the Act, and (h) by failing to provide any substantial rationale for its unauthorized switching of Malibu's electric service to higher, improper and ineligible rates.

ANSWER: ComEd admits that it did not issue credits to Malibu under Rider CABA and § 103.1, and further states that Malibu was not eligible for such credits. All remaining allegations in ¶ 113 are denied.

114. The hereinabove-described conduct of ComEd conduct was performed in bad faith and constitutes a failure to act fairly and in good faith.

ANSWER: Denied.

115. That as a direct and proximate result of such conduct by ComEd, Malibu has sustained direct damages in an amount in excess of \$ 403,000, together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 115 are denied.

COUNT XI. COMED BREACHED ITS OWN CONTRACT FOR ELECTRIC SERVICE

116. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as

though fully set forth herein.

ANSWER: For its answer to ¶ 116, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

117. At all times during the period from November 22, 1999 to January 2, 2007, Malibu was placed on Rate 6 and Rate 6T, the terms of which are governed by the written Rate 6 tariff on file with and approved by the Commission.

ANSWER: Admitted.

118. As expressly set forth in such written tariff, such written tariff constitutes a written contract between ComEd and its customer pursuant to the express terms of Rate 6.

ANSWER: Admitted.

119. ComEd has alleged in writing that Plaintiff was properly placed on Rate 6 and has admitted thereby that a written contract on the express terms set forth in Rate 6 existed between Malibu and ComEd.

ANSWER: Admitted.

120. Notwithstanding the wrongful acts and breaches of such contract by ComEd, Malibu has paid all of the sums alleged to be due under such contract and performed its obligations under and in connection with such contract.

ANSWER: ComEd admits that Malibu has paid all of its invoices for its common area service accounts. ComEd lacks information sufficient to form a belief as to whether Malibu has performed any other obligations under its service contract. All remaining allegations in ¶ 120 are denied.

121. Defendant willfully and wrongfully breached the express terms of such contract by: (a) utilizing incorrect meters and mis-measuring the quantity and volume of electricity provided to

Malibu under such Rate 6 contract; (b) overcharging Malibu for the electricity so delivered; improperly switching Malibu to Rate 6 and subsequently to Rate 6T without the application, request or authorization of Malibu; (c) charging incorrect kWh and kW charges in express contravention of Rate 6 and Rate 6T.

ANSWER: Denied.

122. As a direct and proximate result of ComEd's breaches of such contract, Malibu has sustained direct damages in an amount in excess of \$403,000, which sum represents overcharges by ComEd for the period from November 22, 1999 to January 2, 2007, together with interest due and owing on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 122 are denied.

COUNT XII. MONEY RECEIVED

123. Malibu hereby incorporates and restates Paragraphs 1-66 above as though fully set forth herein.

ANSWER: For its answer to ¶ 123, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

124. Malibu overpaid ComEd by an amount in excess of \$403,000.00, which moneys belong to and are the property of Malibu.

ANSWER: Denied.

125. ComEd has wrongfully retained and refused to repay such moneys under such circumstances and it is unjust that ComEd retains same. Such monies, at law and in equity, must be repaid to Malibu.

ANSWER: Denied.

126. As a direct result of such wrongful retention and failure to return such monies, Malibu has as of the date hereof sustained direct damages in an amount in excess of \$403,000, together with interest due on such amount, and Malibu seeks reparation for such damages.

ANSWER: ComEd admits that Malibu seeks reparations for its alleged damages. All remaining allegations in ¶ 126 are denied.

COUNT XIII. COMED UNLAWFULLY CONVERTED FUNDS PAID BY MALIBU

127. Malibu hereby incorporates and restates Paragraph 1-66 above to the same extent as though fully set forth herein.

ANSWER: For its answer to ¶ 127, ComEd restates its answers to ¶¶ 1-66 as though fully set forth herein.

128. Malibu has overpaid ComEd for its electric service for the period from November 22, 1999 to January 2, 2002 by an amount in excess of \$403,000 and has demanded that ComEd refund the amount of such overpayment, but ComEd has wrongfully retained such overpayment amounts and has failed and refused to refund such overpayment amounts.

ANSWER: Denied.

129. At all times relevant hereto, Malibu had the lawful, unconditional and immediate right of possession of the overpayment amounts paid to ComEd.

ANSWER: Denied.

130. ComEd's actions in wrongfully detaining and failing to pay over such overpayments were intentional, malicious and constitute a wrongful and material interference with Malibu's right to possession of such overpayment amounts, which interference is serious enough to warrant that ComEd pay the full value of such overpayment amounts.

ANSWER: Denied.

131. Malibu has not consented to ComEd's detention of such overpayment amounts.

ANSWER: The allegations in ¶ 131 are vague and ambiguous and are therefore denied.

132. As a result of such wrongful detention and interference with Malibu's right of possession, Malibu has been materially damaged in an amount in excess of \$403,000 and Malibu seeks reparations for such damages.

ANSWER: ComEd admits that Malibu seeks reparations in excess of \$403,000. ComEd denies all remaining allegations in ¶ 132.

Wherefore, Respondent Commonwealth Edison Company requests a ruling in its favor on all remaining claims in Malibu's Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: At all times prior and up to January 2, 2007, Malibu was eligible to take service for its common areas under Rate 6. Under ComEd's Terms and Conditions, a customer who is eligible for two or more rates is not eligible for a refund in the event that it is billed at the higher of the rates for which it is eligible. Accordingly, even if Malibu had been eligible for Rate 14 (which ComEd disputes) for its common area service, all of Malibu's remaining claims for reparations for improper billing under Rate 6 must be dismissed.

SECOND AFFIRMATIVE DEFENSE: Malibu's claims for credits under § 103.1 (Count VI) must be dismissed because Malibu was not eligible for such credits. Specifically, only customers actually taking service under a residential rate as of December 31, 2006 were eligible for a rate discount under § 103.1. Malibu was not taking service as a residential customer as of December 31, 2006.

THIRD AFFIRMATIVE DEFENSE: Malibu's claims for credits under Rider CABA

(Count IX) must be dismissed because Malibu was not eligible for such credits. Specifically, only customers eligible for service under a residential rate as of December 31, 2006 were eligible for a credit under Rider CABA. Malibu was no longer eligible for service as a residential customer as of December 31, 2006.

FOURTH AFFIRMATIVE DEFENSE: Malibu's claim for Breach of the Implied Covenant of Good Faith and Fair Dealing (Count X) must be dismissed because under Illinois law, there is no such separate independent cause of action.

Respectfully submitted,
Commonwealth Edison Company

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One of its attorneys

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